

**IN THE CLAIMS:**

Please amend claims 17 and 18 as indicated on the attached MARKED-UP PREVIOUS VERSION OF THE CLAIMS.

Please replace present claims 17 and 18 with the amended versions thereof, as presented on the attached CLEAN COPY OF AMENDED CLAIMS.

**REMARKS**

Applicants respectfully request reconsideration of this application, and reconsideration of Paper No. 10. Upon entry of this Amendment, claims 1-18 will remain pending in this application. The amendments to claims 17 and 18 are editorial in nature and do not present any new issues which require a new search and/or consideration. Moreover, the amendments to claim 17 and 18 do not narrow the scope of the subject matter of these two claims. Applicants thus respectfully requests that the Amendment be entered and fully considered. Furthermore, no new matter is incorporated by this Amendment.

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Claims 17 and 18 are objected to because of informalities. Specifically the Office Action asserts that the abbreviated terms should be preceded by the terms they intend to abbreviate. In response, claims 17 and 18 have been amended by inserting the terms that are abbreviated by “EDTA” and “BHT.” Accordingly, the rejection is overcome and its withdrawal is respectfully requested.

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Claims 5-18 are rejected under 35 U.S.C. 112, second paragraph, as purportedly indefinite.

The Office Action asserts that the terms “skin structures”, “micronutrients of the skin”, and “sensorial agents” render claim 5 indefinite. In addition, the Office Action further asserts that the terminology “associated with” in claim 15 is indefinite.

Applicants respectfully submit that those of ordinary skill in the art would readily appreciate what is intended by the terms questioned by the Office Action. For example, skin structures are compounds that enhance the skin properties such as hydration, softness, etc. Micronutrients of the skin are inorganic salts of selenium, silicon and manganese contained in seaweed extracts. Such micronutrients act as co-factors of enzymatic reactions that occur in the skin. Sensorial agents and emollients, such as glycerin, butylenes, and silicones, are compounds that provide a pleasant touch to the cosmetic composition making it easily spread on the skin and quickly absorbed while avoiding an "oily" sensation on the skin. As stated in the previous Amendment, the specification contains examples of each. The M.P.E.P. teaches that the test for indefiniteness is not whether more suitable language or modes of expression are available but whether the claim language sets forth the subject matter with a reasonable degree of clarity. See M.P.E.P. 2173.02. The M.P.E.P. further states, "Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire." See *id.* As explained above, those of ordinary skill in the art would readily understand what is intended by these terms. Moreover, defining each term in the claim is not a requirement of 35 U.S.C. 112, second paragraph. Applicants submit that since those of ordinary skill in the art would readily understand what is intended by these terms and examples of each are contained in the specification, the claims fully comply with 35 U.S.C. 112.

With respect to the term "associated with", Applicants submit that this term is not a relative term, such as "higher" or "bigger." Moreover, "associated with" is used in the claim to mean a mixture where the specific emulsifiers cited in claim 5 are used together with one neutralizer compound selected from triethanolamin, soybean lectin and combinations thereof. The term "associated with" is adequately clear to those of ordinary skill in the art. Hence, claim 15 also fully complies with 35 U.S.C. 112.

The above Remarks overcome this rejection. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

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Claims 1-18 are rejected under 35 U.S.C. 103(a) as purportedly obvious based on Rinaldi et al. (U.S. Pat. No. 5,891,470) in view of Huc et al. (U.S. Pat. No. 5,395,620). Applicants respectfully traverse.

The Office Action asserts that Rinaldi teaches each element of the claimed invention except that the microcapsules are biologically active, and the specific ingredients of claims 8, 9, 12, 14-16. The Office Action further asserts that Huc discloses biologically active microcapsules. The Office Action thus concludes that it would have been obvious to modify the invention of Rinaldi by using the biologically active microcapsules of Huc. The Office Action further asserts that employing the specific ingredients of claims 8, 9, 12, 14-16 would also have obvious to those of ordinary skill in the art.

Applicant's invention, as defined by independent claim 1, describes a composition for enhancing the action of Vitamin A on the cellular activity of an individual. The composition includes a plurality of dispersed microspheres. A first group of microspheres include Vitamin A and an antioxidant inserted into the microspheres. In addition, a second group of microspheres include Vitamin C inserted into them. Moreover, the microspheres are made of biologically active material. Applicants have discovered a way to achieve a system which is capable of providing stability to the vitamin C in a aqueous medium through the addition of PVA, which polymer forms a network within the microcapsule thus avoiding the diffusion of vitamin A and vitamin C to the bulk formulation.

The combination of Rinaldi and Huc would not have rendered the claimed invention obvious to those of ordinary skill. The M.P.E.P. states:

**To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143.**

Rinaldi discloses compositions wherein vitamin A and C are impregnated into microparticles. As conceded by the Office Action, Rinaldi fails to teach or fairly suggest using biologically active microcapsules. Huc fails to remedy this deficiency of Rinaldi. Huc describes microcapsules. However, to use the microcapsules of Huc in Rinaldi's composition it would be necessary to "de-impregnate" the microparticles thus separating the vitamin A and C. As stated in the previous response. The use of vitamin A and vitamin C in the impregnated form does not work. Moreover, if the microcapsules of Huc were placed in a oily medium, the vitamin A would permeate to the medium. Furthermore, if the microcapsules were placed in an aqueous medium, the vitamin C would permeate to the medium and, as a result, no longer protect the active ingredient in the formulation. In other words, the vitamin C would degrade. Accordingly, for the reasons described above, neither Rinaldi nor Huc provide the requisite motivation to those of ordinary skill in the art to modify the invention of Rinaldi with the teachings of Huc as suggested by the Office Action.

Rinaldi and Huc actually teach away from the other. Rinaldi teaches that its soft gels are not compatible with water because the water will degrade the gelatin shell of the soft gel. See Column 1, Lines 40-45. This is why Rinaldi specifically uses non-biologically active microparticles. In contrast, Huc teaches using particles which are biocompatible because they are made of atecollogen (a derivative of collagen). See the Abstract. Applicants note that gelatin is also made of collagen. Thus, Rinaldi specifically teaches away from using collagen containing particles as they would degrade. Thus, using Huc's collagen containing particles would actually ruin the composition of Rinaldi. Accordingly, not only does Rinaldi and Huc fail to provide the requisite motivation to those of ordinary skill in the art to modify the invention of Rinaldi with the teachings of Huc, there is also no reasonable expectation of success.

The above Remarks overcome the rejection. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

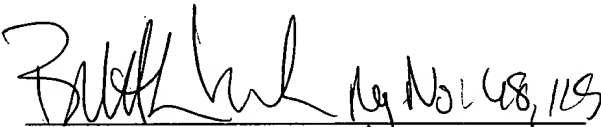
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Applicants respectfully submit that this Amendment and the above remarks obviate all of the outstanding rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees are due in connection with the filing of this Request for Reconsideration, such as fees under 37 C.F.R. §§ 1.16 or 1.17, please charge the fees to our Deposit Account No. 02-4300; Order No. 032286.006.

Respectfully submitted,

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Dated: December 2, 2002  
RGW/BLN

**MARKED-UP PREVIOUS VERSION OF THE CLAIMS**

17. (Amended) The composition according to claim 5, wherein the sequestrant is ethylene diamine tetraacetate (EDTA).

18. (Amended) The composition according to claim 5, wherein the antioxidants are selected from the group consisting of buthyl hydroxytoluene (BHT), dl- $\alpha$ -tocopherol, and combinations thereof.